RECENT CASES.

ADMINISTRATOR—ANCILLARY—DECEDENT'S ESTATES—PROBATE COURT.—LEWIS ET AL., v. RUTHERFORD, 72 S. W. 373 (ARK.)—Where an ancillary administrator is appointed to care for a decedent's insolvent estate in a jurisdiction other than that of the decedent's domicile, *held,* it is his duty to pay over to the principal administrator enough to allow all creditors to share alike.

This decision seems to prescribe the proper course to be followed by administrators. *Dawes v. Head,* 3 Pick. 128. Some authorities hold that it is the duty of the ancillary administrator to satisfy the claims of the creditors of the State in which he is appointed to the full extent of assets obtainable and only the surplus is to be paid over to the principal estate. This latter view is supported by the United States Supreme Court, *Smith v. Bank,* 5 Pet. 518, 527. Whether the court should decree a distribution or remit the assets to the principal administrator is a matter of discretion. *Fretwell v. McLemore,* 52 Ala. 124.

ALIENS—NON-RESIDENT—DEATH BY WRONGFUL ACT—RIGHT OF ACTION.—BONTHRON ET UX. V. PHOENIX LIGHT AND FUEL CO., 71 PAC. 941 (ARIZ.).—The Arizona statute giving a right of action to parents for the wrongful death of their son does not expressly or impliedly exclude non-residents or aliens from its benefit. *Held,* that residents of Canada may bring an action thereunder.

The general rule is that non-residents may sue. *R. Co. v. Glover,* 92 Ga. 132; *Philpott v. R. Co.,* 35 Mo. 164; *R. Co. v. Higgins,* 85 Tenn. 620; *R. Co. v. Mills,* 57 Kan. 687. This has been held not to apply to a non-resident mother who was an alien, on the ground that no legal liability existed which made it her son's duty to support her. *Deni v. R. Co.,* 181 Pa. St. 525. See also *Brannigan v. Union Gold Mining Co.,* 93 Fed. 164. The doctrine of these latter cases has been recently disputed in Massachusetts. *Vetaloro v. Perkins,* 101 Fed. 393; *Mulhall v. Fallon,* 176 Mass. 266. In England each view has been recently upheld. *Adam v. B. & F. S. S. Co.,* 2 Q. B. 430; *Davidson v. Hill,* 70 L. J. Q. B. 788. Under a special act giving a right of action to those injured by a death caused by a riot or lynching, it has been held that a British citizen could sue, the decision being based largely upon the ground that the purpose of the statute was the suppression of murder, and that this could not be accomplished if a distinction were made against aliens. *Luke v. Calhoun County,* 52 Ala. 115. See also discussion in 54 L. R. A. 935.

BANKRUPTCY—LIEN—SALE WITHIN FOUR MONTHS PERIOD.—CLARKE V. LARREMORE, TRUSTEE, 9 AM. B. R. 476, U. S. SUP. CT., FEB. 1903.—*Held,* that proceeds of a sheriff's sale held within four months prior to filing a petition in bankruptcy became subject to the control of the trustee in bank-

ruptcy where judgment, execution and levy were all within four months period. White, J. and Peckham, J., *dissenting*.

By Section 67 (*f*.) of the Bankruptcy Act, liens such as the one giving rise to the proceeds in question, are rendered null and void "in case the judgment debtor is adjudged a bankrupt." This decision of the Supreme Court defines this section to include the proceeds in the hands of the sheriff. "The invalidity relates back to the entry of the judgment and effects all subsequent proceedings." The money in the sheriff's hands takes the place of the property. *Balmer v. Balmer,* 2 Lanc. Law Review, 11. "The rights of the creditor were still subject to interception," and the proceeds do not become his until paid over. *Baker v. Kenworthy,* 41 N. Y. 215. That the money in the sheriff's hands is "in custodia legis" and not subject to levy is almost universally held. *Turner v. Fendall,* 1 Cranch 116; *Conover v. Ruckman,* 32 N. J. Eq. 685; *Hardy v. Tilton,* 68 Me. 195, hand note. The provision in the section in question excepting bona fide purchasers only from its operation would seem to lead to a like conclusion. *In re Franks,* 95 Fed. 635. But the Supreme Court of New York, App. Div., held in a recent case that where the money was paid over it did not come within Section 67 (f.). *Levor v. Leitor,* 8 Am. B. R. 459. The dissent was apparently in accordance with this view and with certain recent New York decisions holding that property in the sheriff's hands belongs to the creditor. *Wehle v. Conners,* 83 N. Y. 231.

BANKS—AUTHORITY OF CASHIER—LIABILITY OF BANK.—TAYLOR V. COMMERCIAL BANK, 66 N. E. 726 (N. Y.)—*Held,* that in the absence of authorization, the cashier of a bank has no authority by virtue of his position to make any representation on behalf of the bank as to the solvency of a customer who is one of its debtors. Bartlett, O'Brien, and Vann, JJ., *dissenting*.

The rule is laid down in the lower court, 73 N. Y. Supp. 929, and supported by the dissenting opinion that a principal is liable to a third person for the fraud of his agent, perpetrated by the latter in the course of his employment, although the act was *ultra vires,* and the principal did not know of it. On the doctrine of *ultra vires* the decisions are conflicting. See cases cited in *Nowac v. Railroad Co.,* 166 N. Y. 44. Several recent cases seem to treat the misrepresentations of a cashier as governed by principles different from those applicable to other classes of agents. *Crawford v. Boston Store Mercantile Co.,* 67 Mo. App. 39; *First Nat. Bk. v. Marshall and Ilsey Bk.,* 83 Fed. 725. *Swift v. Jewsbury,* L. R. 9 Q. B. 301, cited by the dissenting judges does not appear to support their opinion. See also *Barwick v. English Joint Stock Bank,* L. R. 2 Exch.259. The majority opinion is in accord with the weight of authority. *American Surety Co. v Pauly,* 170 U. S. 133; *Mapes v Sec. Nat. Bk.,* 80 Pa. 163; *Horrigan v. First Nat. Bk.,* 56 Tenn. 137.

BOUNDARIES—RIVERS—STATES—CONCURRENT JURISDICTION.—ROBERTS V. FULLERTON, 93 N. W. 1111 (WIS.).—An officer from Minnesota, acting under the laws of that State, seized plaintiff's fish net staked to the bottom of the Mississippi River on the Wisconsin side. In an action for damages, *held,* that the concurrent jurisdiction given by Congress over the